

Public Utility Commission of Texas

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Pat Wood, III
Chairman

Judy Walsh
Commissioner

Patricia A. Curran
Commissioner

June 25, 1998

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Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: CC Docket No. 96-115
In the Matter of
Telecommunication Carriers' Use
of CPNI

To Ms. Salas:

Enclosed herewith for filing with the Commission are an original plus eleven copies of the Comments of the Public Utility Commission of Texas in the above captioned matter. We are also providing copies to ITS and individuals indicated on the attached service list.

Sincerely,

Stephen J. Davis
Director
Office of Policy Development

cc: ITS, Inc.
Janice Myles,
Common Carrier Bureau

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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JUN 25 1998
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)	
)	
Telecommunication Carriers')	CC Docket No. 96-115
Use of CPNI)	

**MOTION TO ACCEPT LATE-FILED
COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

In its Second Report and Order and Further Notice of Proposed Rulemaking (FNPRM) dated February 26, 1998 in this proceeding, the Commission requested comments on three general issues that involve carrier obligations as set forth by sections 222(a) and (b) of the Act.¹ The Public Utility Commission of Texas (PUCT) has proposed rule language that addresses directly one issue on which the Commission seeks comment, and will therefore comment only on customer rights to restrict disclosure and use of CPNI for all marketing purposes. The deadline for filing comments in response to the FNPRM was June 9, 1998, and reply comments were due on or before June 23, 1998. The timing of the Public Utility Commission of Texas' Open Meetings precluded consideration of these comments prior to the Commission's deadline dates. We therefore request your consideration of the attached Comments in this proceeding.

¹ Telecommunications Act of 1996 § 3, 47 U.S.C.A. § 222 (West Supp. 1997).

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Telecommunication Carriers' Use)	CC Docket No. 96-115
of CPNI)	
)	

**COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS
ON TELECOMMUNICATIONS CARRIERS' USE OF CUSTOMER PROPRIETARY NETWORK
INFORMATION**

Introduction

In the Second Report and Order and Further Notice of Proposed Rulemaking (FNPRM) in Docket No. 96-115, the Federal Communications Commission (Commission) solicited comments from interested parties regarding telecommunications carriers' use of Customer Proprietary Network Information (CPNI).¹ The Public Utility Commission of Texas (PUCT) initiated a rulemaking in May, 1998, in order to bring Texas Rules regarding CPNI in compliance with the Telecommunications Act of 1996 § 3, 47 U.S.C.A. § 222.² The timing of the PUCT's Open meetings precluded consideration of these comments prior to the FCC's deadline dates.

The PUCT's proposed rule language addresses directly one issue on which the Commission seeks comment, that is, whether a customer has the right to restrict a

¹ *Implementation of the Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information Provisions of the Telecommunication's Act of 1996*, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, ¶ 203 (rel. Feb. 26, 1998).

² see attachment for Proposed PUCT rule (Subst. Rule 26.122)

telecommunications carrier from using, disclosing, or permitting access to CPNI for all marketing purposes.³

CPNI Issues

It is PUCT policy to construe the privacy of CPNI broadly in conformity with the general policy that customers should be permitted to control the outflow of information about themselves.⁴ This includes allowing customers to protect themselves from unwanted marketing efforts. The proposed rule change regarding CPNI in Texas comports with the Commission's intent to strike a balance between consumer privacy interests and competitive interests regarding CPNI.⁵

The proposed PUCT rule language that relates directly to the FCC's solicitation for comments provides the customer maximum latitude to restrict use of CPNI. The customer may restrict a utility's use of customer-specific CPNI to market or provide services outside the existing customer-business relationship. In addition, the customer has the right to restrict the use of customer-specific CPNI for all marketing purposes, even those instances in which customer approval is not required.⁶

³ *Implementation of the Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information Provisions of the Telecommunication's Act of 1996*, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, ¶ 204 (rel. Feb. 26, 1998).

⁴ P.U.C. SUBST. R. 23.57(b)

⁵ *Implementation of the Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information Provisions of the Telecommunication's Act of 1996*, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, ¶ 3 (rel. Feb. 26, 1998).

⁶ Proposed P.U.C. SUBST. R. 26.122(c)(3)

Consistent with the Commission's decision,⁷ the PUCT interprets CPNI to belong to the customer, and not the carrier. The PUCT agrees that the customer, not the carrier, has the right to determine ultimate uses of CPNI.

Additional Comments About PUCT Proposed Rule

In keeping with the FCC's interpretation of a utility's right to use CPNI for customer retention and marketing purposes, the PUCT has proposed specific circumstances in which a utility need not have customer approval to use CPNI.⁸ In addition, the proposed rule defines exceptional circumstances in which customer approval is never required.⁹

Conversely, the proposed PUCT rule also defines circumstances in which a utility is prohibited from marketing or providing services without customer approval.¹⁰ Moreover, the burden of seeking customer approval prior to marketing or providing certain services is now shifted to the utility.¹¹

Language is also maintained from the previous PUCT CPNI rule outlining the specific actions that a utility must take to make customers aware of their rights regarding CPNI.¹² These include printed information in the white pages of telephone directories

⁷ *Implementation of the Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information Provisions of the Telecommunication's Act of 1996*, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, ¶ 43 (rel. Feb. 26, 1998).

⁸ Proposed P.U.C. SUBST. R. 26.122(c)(1) and (2)

⁹ Proposed P.U.C. SUBST. R. 26.122(c)(4)

¹⁰ Proposed P.U.C. SUBST. R. 26.122(d)

¹¹ Proposed P.U.C. SUBST. R. 26.122(e)

¹² Proposed P.U.C. SUBST. R. 26.122(f)

and an oral or written one-time notification of a customer's right to restrict use of, disclosure of, and access to that customer's CPNI.


Conclusion

Attached herewith is the proposed PUCT CPNI rule. The proposed rule represents the PUCT's current perspective on these issues. However, the PUCT will receive comments and reply comments in June and July and will adopt a rule, perhaps with modifications suggested in the comment period, in August.

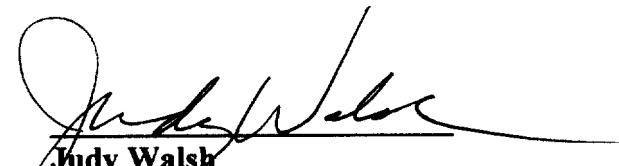
Respectfully submitted,

**Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326**


June 24th, 1998



**Pat Wood, III
Chairman**



**Judy Walsh
Commissioner**



**Patricia A. Curran
Commissioner**

Proposed PUCT Rule (Subst. Rule 26.122)

- (a) **Application.** This section applies to all certificated telecommunications utilities as defined in §26.5 of this title (relating to Definitions).
- (b) **Purpose.** The purpose of this section is to delineate the circumstances in which telecommunications utilities are required to gain approval of the customer prior to using, disclosing, or permitting access to customer-specific customer proprietary network information (CPNI), and to set forth the requisites for obtaining customer notification and approval. This section is intended to be consistent with the federal Telecommunications Act of 1996 §222 in balancing competitive and consumer privacy interests with respect to customer-specific CPNI.
- (c) **Customer approval not required.** A telecommunications utility may use, disclose, or permit access to customer-specific CPNI, without customer approval, as described in this subsection.
 - (1) **Generally.** Any telecommunications utility may use, disclose, or permit access to customer-specific CPNI for the purpose of providing or marketing service offerings among the categories of service (i.e. local, interexchange) already subscribed to by the customer from the same utility, without customer approval. Any telecommunications utility may use, disclose, or permit access to customer-specific CPNI for the purpose of providing optional extended area calling plans that a telecommunications utility may offer pursuant to §23.49 of this title (relating to Telephone Extended Area Service), or pursuant to a final order of the commission in a proceeding pursuant to the Public Utility Regulatory Act §§51.109, 53.101-53.113, 53.151, 53.152, 53.201, 53.202, 53.251, 53.252, 53.301, and 53.303-53.307.
 - (2) **Affiliates.** If a telecommunications utility provides different categories of service, and a customer subscribes to more than one category of service offered by the telecommunications utility, the utility is permitted to share customer-specific CPNI only to those affiliated entities that provide a service offering to the customer. If the telecommunications utility provides different categories of service, but a customer does not subscribe to more than one category, the telecommunications utility is not permitted to share customer-specific CPNI with its affiliated entities.
 - (3) **Customer's right to restrict CPNI.** Even though customer approval is not required for situations set forth in subsection (c)(1) and (2), a customer may notify the telecommunications utility that such customer restricts the use of, disclosure of, and access to that customer's specific CPNI for use in the situations described in subsection (c)(1) and (2).
 - (4) **Exceptions.** Nothing in this section prohibits a telecommunications utility from using, disclosing, or permitting access to customer-specific CPNI obtained from its customers, either directly or indirectly:
 - (A) to provide inside wiring installation, maintenance, or repair services;

- (B) to initiate, render, bill for, or collect for customer-authorized telecommunications services;
 - (C) to protect the rights or property of the utility, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or
 - (D) to market services other than those to which a residential customer already subscribes, if such customer contacts the telecommunications utility to inquire about such services offered by the telecommunications utility.
 - (E) to conduct research on the health effects of commercial mobile radio services (CMRS).
- (d) **Customer approval required.** Except as described in subsection (c) of this rule, a telecommunications utility may not use, disclose, or permit access to customer-specific CPNI, without customer approval, for the following:
- (1) to market to a customer service offerings that are within a category of service to which the customer does not already subscribe from that telecommunications utility, unless the telecommunications utility has customer approval to do so;
 - (2) to provide Customer Premises Equipment and information services, including call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and Internet access;
 - (3) to identify or track customers who call competing service providers;
 - (4) to access a former customer's CPNI to regain the business of the customer who has switched to another service provider.
- (e) **Obtaining customer approval.** A telecommunications utility is required by this section to obtain customer approval to use, disclose, or permit access to customer-specific CPNI to market a customer service to which the customer does not already subscribe from that telecommunications utility must do so in compliance with the following requirements of this subsection. Customer approval remains in effect until the customer revokes or limits such approval.
- (1) A telecommunications utility may obtain approval through written, oral, or electronic methods;
 - (2) A telecommunications utility relying on oral approval must bear the burden of demonstrating that such approval has been given in compliance with this section;
 - (3) A telecommunications utility must maintain records of notification and approval, whether oral, written, or electronic, for at least one year.
- (f) **Notification.** Prior to any solicitation for customer approval, a telecommunications utility must provide a one-time notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI. In addition to printing such notification in the white pages of its telephone directories, a telecommunications utility shall provide notification through oral or written methods. Notification must provide sufficient information

to enable the customer to make an informed decision as to whether to permit a telecommunications utility to use, disclose or permit access to, the customer's CPNI.

- (1) At a minimum, customer notification shall provide, in reasonably comprehensible language:
 - (A) An explanation of customer-specific CPNI, and the types of information that constitute customer-specific CPNI.
 - (B) An explanation of the telecommunications utility's duty, and the customer's right, under federal law, to restrict the telecommunications utility's use of his or her customer specific CPNI.
 - (C) A statement that specifically explains the manner in which the customer may grant or restrict the telecommunications utility's use of his or her customer specific CPNI.
 - (D) An explanation to the customer that restricting the telecommunications utility's use of customer specific CPNI may not eliminate all marketing contacts from the telecommunications utility.
 - (E) A statement that there will be no charge to the customer for electing to restrict the use of his or her customer specific CPNI.
 - (F) A statement informing the customer that denial of approval will not affect the provision of any services to which the customer subscribes.
 - (G) A statement explaining that any approval or denial of approval for the use of customer-specific CPNI outside of the service to which the customer already subscribes to from that telecommunications utility is valid until the customer affirmatively revokes or limits such approval or denial.
 - (H) A statement explaining the limited circumstances described in paragraph (2) of this subsection, under which a telecommunications utility may use customer-specific CPNI to market services other than those to which the customer already subscribes, even if the customer requests restriction of the use of the customer-specific CPNI.
 - (I) A telecommunications utility also may state in the notification that the customer may use an affirmative written request to direct the telecommunications utility to disclose CPNI to a specific person or for a specific purpose.
- (2) Even if a residential customer requests restriction of the use of his or her customer-specific CPNI, a telecommunications utility may use customer-specific CPNI to market services other than those to which the customer already subscribes, if such customer contacts the telecommunications utility to inquire about such services offered by the telecommunications utility.
- (3) **Other notification requirements.** A telecommunications utility shall adhere to the following notification specifications:
 - (A) If any notification is translated into another language, then all portions of the notification must be translated into that language.
 - (B) A utility may state in the notification that the customer's approval to use customer-specific CPNI may enhance the telecommunications utility's ability to offer products and services tailored to the customer's needs.

- (C) A telecommunications utility may not include in the notification any statement attempting to encourage a customer to freeze third party access to customer-specific CPNI.
 - (D) A telecommunications utility's solicitation for approval must be proximate in time to the notification of a customer's CPNI rights, and if written, placed in the same envelope in which notification is mailed.
 - (4) **Staff review of the notification.** The notification shall be reviewed by the staff of the Regulatory Division of the commission before it is distributed. The staff of the Regulatory Division shall notify the telecommunications utility within ten days of submission whether the proposed notification may be distributed or must be modified and distributed.
- (g) **Safeguards.** Prior to solicitation of a customer's approval, a telecommunications utility must establish the following with respect to safeguard provisions for the use of customer-specific CPNI:
- (1) Telecommunications utilities must develop and implement software that indicates within the first few lines of the first screen of a customer's service record the CPNI approval status, and reference the customer's existing service subscription.
 - (2) Telecommunications utilities must train their personnel as to when they are and are not authorized to use CPNI, and carriers must have an express disciplinary process in place.
 - (3) Telecommunications utilities must maintain an electronic audit mechanism that tracks access to customer accounts, including when a customer's record is opened, by whom, and for what purpose. Telecommunications utilities must maintain these contact histories for a minimum period of one year.
 - (4) Telecommunications utilities must establish a supervisory review process regarding telecommunications utility compliance with the provisions of the subsection for outbound marketing situations and maintain records of telecommunications utility compliance for a minimum period of one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request.
 - (5) A telecommunications utility must have a corporate officer, as an agent of the telecommunications utility, sign an affidavit on an annual basis that the officer has personal knowledge that the telecommunications utility is in compliance with the rules in this subsection. A statement explaining how the telecommunications utility is in compliance with the provisions in this subsection must accompany the affidavit.
- (h) **Aggregate CPNI.** If a telecommunications utility compiles and uses aggregate CPNI for marketing purposes or provides aggregate CPNI to any business associated with the telecommunications utility for marketing purposes, it must also provide aggregate CPNI to any third party upon request, except when a Local Exchange Carrier uses aggregate information only to tailor its service offering to better suit the needs of its existing customers. A telecommunications utility must

offer to provide aggregate CPNI under the same terms and conditions and at the same price as it is made available to all businesses affiliated with the telecommunications utility and to utility personnel marketing supplemental services, provided that the third party must specify the type and scope of the aggregate CPNI requested. A telecommunications utility must, upon request, provide such aggregate CPNI to a third party under any other alternative terms, conditions, or prices that are just and reasonable under the circumstances and that are not unreasonably preferential, prejudicial or discriminatory.

- (i) **Subscriber list information.** A telecommunications utility that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request, to the extent that such person uses the subscriber list information solely for publishing directories in any format.
- (j) **Definition.** The term "subscriber list information," when used in subsection (i), means any information:
 - (1) identifying the listed names of subscribers of a telecommunications utility and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and
 - (2) that the telecommunications utility or an affiliate has published, caused to be published, or accepted for publication in any directory format.